



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2004

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston
PO Box 1562
Houston, Texas 77251-1562

OR2004-9169

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 211526.

The Houston Police Department (the "department") received a request for copies of all complaints and arrest and incident reports pertaining to a specified address, as well as for three identified individuals, from a specified time period. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You state that the report submitted as Exhibit 10 involves alleged abuse or neglect of a child. Because Exhibit 10 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, Exhibit 10 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold Exhibit 10 from disclosure under section 552.101 of the Government Code as information made confidential by law.

You claim that the remaining information is subject to section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the report submitted as Exhibit 2 relates to an open and active criminal investigation. You also claim that the reports submitted as Exhibits 5-7, 9, 11-12, 14, 16 and 17 relate to criminal investigations that are currently inactive pending additional leads. You further state that the statute of limitations has not run on any of these inactive investigations, which may be reactivated once additional leads are developed. Based upon these representations, we conclude that the release of Exhibits 2, 5-7, 9, 11-12, 14, 16 and 17 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You have submitted arguments explaining how the reports submitted

as Exhibits 3, 4, 8, 13, 15, 18 and 19 pertain to criminal investigations that concluded in results other than conviction or deferred adjudication. Therefore, we conclude that section 552.108(a)(2) is applicable to Exhibits 3, 4, 8, 13, 15, 18 and 19.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. However, you contend that some of the basic information in Exhibit 4 must be withheld because it pertains to an alleged sexual assault. Front page offense report information includes the identity and description of the complainant and a detailed description of the offense. See Open Records Decision No. 127 at 4 (1976). Section 552.101 encompasses information protected by common law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offenses may be withheld under common law privacy.

In this instance you contend that the victim's identifying information and certain details regarding the sexual assault should be withheld on the basis of common law privacy. We agree that information that would identify the victim must be withheld under section 552.101 and common law privacy. However, if references to the victim's identity are redacted, the release of details regarding the incident would not implicate the privacy rights of this individual. Therefore, only the victim's identifying information must be withheld under section 552.101 on the basis of common law privacy. The department must release the remaining basic information pertaining to Exhibit 4 to the requestor.¹ Additionally, the department must release all basic front page offense and arrest information pertaining to the remaining exhibits.

In summary, the department must withhold Exhibit 10 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The identifying information of a sexual assault victim in Exhibit 4 must be withheld under section 552.101 and common law privacy. With the exception of all remaining basic front page offense and arrest information, the department may withhold from disclosure Exhibits 2, 5-7, 9, 11-12, 14, 16 and 17 under section 552.108(a)(1), and Exhibits 3, 4, 8, 13, 15, 18 and 19 under section 552.108(a)(2).

¹Because basic information described in *Houston Chronicle* does not include information covered by section 552.130, we do not consider your arguments concerning that exception.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 211526

Enc. Submitted documents

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(w/o enclosures)